IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1885 OF 2007

DEEPAK GOPALDAS BAJAJ ..APPLICANT/ACCUSED

V/S

STATE OF MAHARASHTRA & ORS...RESPONDENTS

MR. UDAY P. WARUNJIKAR WITH YOGESH ROHIRA FOR APPLICANT.

MS. KANTHARIA FOR RESPONDENT NOS. 1 TO 3.

SHRI G.C. PANDEY, SIO, DRI PRESENT.

SHRI D. KUMAR, I.O., DRI PRESENT.

CORAM : J.H. BHATIA, J.

DATE : 11TH JUNE 2007.

P.C.

1. Heard Mr.Warunjikar, learned counsel for the Applicant/Accused and Ms. Kantharia, learned counsel for the Respondent Nos. 1 to 3.

2. Applicant has been arrested on 9th June 2007 under section 135 of the Customs Act on the ground that he had evaded customs duty running into crores of rupees. On the same day remand application was moved before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, for remand and judicial custody and it was

granted upto 22nd June, 2007. On the same day the Applicant also moved an application for bail. However, learned Addl. Chief Metropolitan Magistrate, issued notice to the prosecution returnable on 22nd June 2007.

3. Mr. Warunjikar, learned counsel for the applicant submits that by order dated 2nd March 2007 and 18th May 2007 the Supreme Court had given protection to the applicant against arrest and, therefore, the arrest of the applicant is illegal. It is the contention of the Respondents that protection given by the Supreme Court was in a different matter. This court cannot enter into this controvery. According to the learned counsel Mr. Warunjikar the offence falls under section 135(1)(ii) of the Customs Act and the offence is bailable as held by this court number of times. On the other hand it is the contention of the Respondents that the offence was under section 135(1)(i) in view of the violation of section 123 and the offence is non-bailable. That question can be argued at the time of hearing of the application for bail. As the prosecution has not sought the police custody of the accused and the

applicant/accused is in judicial custody there

cannot be any justification to adjourn the hearing of the application for bail for two weeks. Application was filed on 9th June 2007. In my opinion the application for bail should have been considered by the Magistrate expeditiously.

4. Therefore, the parties are directed to appear before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, on 13-6-2007 at 3.00 p.m. The Respondents shall file their reply at the same time and the learned Addl. Chief Metropolitan Magistrate shall hear the application for bail filed by the applicant and dispose of the same. With this direction, the present application stands disposed of. The parties shall act on authenticated copy of the order. The officer of the Respondent is present and he shall take note of this order.

(J.H. BHATIA, J.)